

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

50960

FILE: B-184269

DATE: July 31, 1975

MATTER OF: Pressure Sensors, Inc.

97323

DIGEST:

Protest based on ground that patent infringement would result from performance under contract award to another firm is not for consideration.

Pressure Sensors, Inc. protests any and all awards to anyone other than PSI under solicitations calling for gauges which it alleges are covered by U.S. Patent 2929249. Essentially it is argued that award to any firm other than PSI will infringe protester's patent rights.

Under 28 U.S.C. 1498, Government contractors and subcontractors are relieved entirely of liability for infringing patents embodied in items accepted or to be accepted by the Government pursuant to its contracts. Section 1498 provides that in such circumstances the patent holder's remedy is exclusively against the Government by an action in the Court of Claims for damages. The courts have recognized section 1498 as constituting, in effect, an eminent domain statute, which vests in the Government the right to use any patent granted by it upon payment of reasonable compensation to the patent holder. Richmond Screw Anchor Co. v. United States, 275 U.S. 331 (1928); Stelma, Incorporated v. Bridge Electronics Co., 300 F. 2d 761 (1962). The act was intended to give patent holders an adequate and effective remedy for infringement of their patents while saving the Government from having its procurement programs thwarted, delayed or obstructed pending litigation of patent disputes. Bereslavsky v. Esso Standard Oil Co., 175 F. 2d 148 (1949).

Considering the act and its purposes, this Office has concluded that Government contracts should not be restricted to patent holders and their licensees where patents are held. Instead, all potential sources should be permitted to compete for Government contracts regardless of possible patent infringement. 46 Comp. Gen. 205 (1966). Accordingly, a protest based on the ground that patent infringement would result from performance under a contract award to another company is not for consideration. B-178124, March 9, 1973.

R. K. Miller
Deputy Comptroller General
of the United States